

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN ASSEMBLY MARCH 24, 2014

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1439

Introduced by Assembly Members Salas, Bonta, and Frazier
(Coauthors: Assembly Members Achadjian, Bigelow, Bocanegra,
Bonilla, Brown, Ian Calderon, Campos, Conway, Cooley, Daly,
Eggman, Fox, Gonzalez, Gray, Grove, Roger Hernández, Holden,
Jones-Sawyer, Levine, Medina, Melendez, Mullin, Nazarian,
Nestande, Perea, V. Manuel Pérez, Quirk-Silva, Rendon, Ting,
Waldron, and Wilk)

(Coauthors: Senators Lara, Pavley, and Vidak)

January 6, 2014

An act to amend Section 17539.1 of the Business and Professions Code, relating to sweepstakes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1439, as amended, Salas. Unfair business practices: contests and sweepstakes.

Existing law generally regulates false advertising and specifically prohibits certain unfair acts or practices undertaken by, or omissions of, a person in the operation of a contest, including misrepresenting the odds of winning a prize or failing to award and distribute all prizes. A violation of this provision is a misdemeanor.

This bill would apply the prohibition described above to unfair acts or practices undertaken by, or omissions of, a person in the operation of a sweepstakes, as defined. The bill would ~~also~~ prohibit using or offering to use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value. By creating new crimes, the bill would impose a state-mandated local program. *The bill would also except from this prohibition game promotions and sweepstakes conducted on a limited basis as an advertising and marketing tool incidental to substantial bona fide sales of consumer products or services, as specified.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17539.1 of the Business and Professions
2 Code is amended to read:
3 17539.1. (a) The following unfair acts or practices undertaken
4 by, or omissions of, any person in the operation of any contest or
5 sweepstakes are prohibited:
6 (1) Failing to clearly and conspicuously disclose, at the time of
7 the initial contest solicitation, at the time of each precontest
8 promotional solicitation and each time the payment of money is
9 required to become or to remain a contestant, the total number of
10 contestants anticipated based on prior experience and the
11 percentages of contestants correctly solving each puzzle used in
12 the three most recently completed contests conducted by the person.
13 If the person has not operated or promoted three contests he or she
14 shall disclose for each prior contest if any, the information required
15 by this section.

1 (2) Failing to promptly send to each member of the public upon
2 his or her request, the actual number and percentage of contestants
3 correctly solving each puzzle or game in the contest most recently
4 completed.

5 (3) Misrepresenting in any manner the odds of winning any
6 prize.

7 (4) Misrepresenting in any manner, the rules, terms, or
8 conditions of participation in a contest.

9 (5) Failing to clearly and conspicuously disclose with all contest
10 puzzles and games and with all promotional puzzles and games
11 all of the following:

12 (A) The maximum number of puzzles or games that may be
13 necessary to complete the contest and determine winners.

14 (B) The maximum amount of money, including the maximum
15 cost of any postage and handling fees, that a participant may be
16 asked to pay to win each of the contest prizes then offered.

17 (C) That future puzzles or games, if any, or tie breakers, if any,
18 will be significantly more difficult than the initial puzzle.

19 (D) The date or dates on or before which the contest will
20 terminate and upon which all prizes will be awarded.

21 (E) The method of determining prizewinners if a tie remains
22 after the last tie breaker puzzle is completed.

23 (F) All rules, regulations, terms, and conditions of the contest.

24 (6) Failing to clearly and conspicuously disclose the exact nature
25 and approximate value of the prizes when offered.

26 (7) Failing to award and distribute all prizes of the value and
27 type represented.

28 (8) Representing directly or by implication that the number of
29 participants has been significantly limited, or that any particular
30 person has been selected to win a prize unless such is the fact.

31 (9) Representing directly or by implication that any particular
32 person has won any money, prize, thing, or other value in a contest
33 unless there has been a real contest in which a meaningful
34 percentage, which shall be at least a majority, of the participants
35 in such contests have failed to win a prize, money, thing, or other
36 value.

37 (10) Representing directly or by implication that any particular
38 person has won any money, prize, thing, or other value without
39 disclosing the exact nature and approximate value thereof.

(11) Using the word “lucky” to describe any number, ticket, coupon, symbol, or other entry, or representing in any other manner directly or by implication that any number, ticket, coupon, symbol, or other entry confers or will confer an advantage upon the recipient that other recipients will not have, that the recipient is more likely to win a prize than are others, or that the number, ticket, coupon, symbol, or other entry has some value that other entries do not have.

(12) Using or offering for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that (A) directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or (B) otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value. *This paragraph does not make unlawful game promotions or sweepstakes conducted by for-profit commercial entities on a limited and occasional basis as an advertising and marketing tool that are incidental to substantial bona fide sales of consumer products or services and that are not intended to provide a vehicle for the establishment of places of ongoing gambling or gaming.*

(13) Failing to obtain the express written or oral consent of individuals before their names are used for a promotional purpose in connection with a mailing to a third person.

(14) Using or distributing simulated checks, currency, or any simulated item of value unless there is clearly and conspicuously printed thereon the words: SPECIMEN—NONNEGOTIABLE.

(15) Representing, directly or by implication, orally or in writing, that any tie breaker puzzle may be entered upon the payment of money qualifying the contestant for an extra cash or any other type prize or prizes unless:

(A) It is clearly and conspicuously disclosed that the payments are optional and that contestants are not required to pay money, except for reasonable postage and handling fees, to play for an extra cash or any other type of prize or prizes; and

(B) Contestants are clearly and conspicuously given the opportunity to indicate they wish to enter such phase of the contest for free, except for reasonable postage and handling fees the amount of which shall not exceed one dollar and fifty cents (\$1.50)

1 plus the actual cost of postage and which shall be clearly and
2 conspicuously disclosed at the time of the initial contest solicitation
3 and each time thereafter that the payment of such fees is required.
4 The contestants' opportunity to indicate they wish to enter for free
5 shall be in immediate conjunction with and in a like manner as the
6 contestants' opportunity to indicate they wish to play for an extra
7 prize.

8 (b) For the purposes of this section, "sweepstakes" means a
9 procedure, activity, or event, for the distribution, donation, or sale
10 of anything of value by lot, chance, predetermined selection, or
11 random selection that is not unlawful under other provisions of
12 law, including, but not limited to, Chapter 9 (commencing with
13 Section 319) and Chapter 10 (commencing with Section 330) of
14 Title 9 of Part 1 of the Penal Code.

15 (c) This section does not apply to an advertising plan or program
16 that is regulated by, and complies with, the requirements of Section
17 17537.1.

18 (d) Nothing in this section shall be deemed to render lawful any
19 activity that is unlawful pursuant to other law, including, but not
20 limited to, Section 320, 330a, 330b, 330.1, or 337j of the Penal
21 Code.

22 (e) Nothing in this section shall be deemed to render unlawful
23 or restrict otherwise lawful games and methods used by a gambling
24 enterprise licensed under the Gambling Control Act or operations
25 of the California State Lottery.

26 SEC. 2. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.